

**IOWA DEPARTMENT OF NATURAL RESOURCES  
AMENDMENT TO ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

KYLE PATTISON TIRE COMPANY LLC;

Clayton County, Iowa

AMENDMENT TO ADMINISTRATIVE  
CONSENT ORDER

NO. 2012-SW-10-A1

TO: Kyle Pattison  
Manager  
Kyle Pattison Tire Company LLC  
703 1<sup>st</sup> Street  
Clayton, IA 52049

**I. SUMMARY**

This amendment to administrative consent order No. 2012-SW-10 (amendment) is entered into between the Iowa Department of Natural Resources (DNR) and Kyle Pattison Tire Company LLC (Pattison Tire Co.) for the purpose of modifying the date by which Pattison Tire Co. will begin the project to seal the historic accumulation of waste tires in an inactive underground mine facility owned by Pattison Tire Co.

Questions regarding this amendment should be directed to:

**Relating to technical requirements:**

Doug Hawker, Field Office #1  
Iowa Department of Natural Resources  
909 W. Main St., Suite #4  
Manchester, IA 52057  
Phone: 563-927-2640

**Relating to legal requirements:**

Jon Tack, Attorney for the DNR  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> St.  
Des Moines, IA 50319  
Phone: 515-281-8889

**II. JURISDICTION**

This amendment is issued pursuant to the provisions of Iowa Code section 455D.23 which authorizes the Director to issuance any order necessary to secure compliance with or prevent a violation of the provisions of Iowa Code chapter 455D, and the rules adopted pursuant to that chapter and Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part.

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**III. STATEMENT OF FACTS**

1. – 11. The Statement of Facts set forth in administrative consent order No. 2012-SW-10, issued on April 1, 2012, are incorporated herein by reference.

12. The DNR and Pattison Tire Co. agree that unforeseen circumstance have delayed the initiation of the actions required by that consent order and therefore an amendment to the schedule contained therein is warranted. Unforeseen circumstances include delays in negotiating an agreement with the storage company that owns adjoining sections of the inactive mine, difficulties in obtaining appropriate insurance coverage and authorizations to conduct the proposed activities in the inactive underground mine, and the exploration of alternative procedures for the sealing of the waste tires in situ.

**IV. CONCLUSIONS OF LAW**

1. - 5. The Conclusions of Law Facts set forth in administrative consent order No. 2012-SW-10, issued on April 1, 2012, are incorporated herein by reference.

**V. ORDER**

THEREFORE, the DNR orders and Pattison Tire Co. agrees to the following:

1. Pattison Tire Co. is hereby authorized to permanently dispose of all waste tires received prior to July 1, 2010 in the previously approved areas of the mine, as shown on the map in Appendix A (*attached to the original administrative consent order and omitted from this amendment*), subject to the conditions set forth below. No new waste tires may be stored at the facility and no new areas of the mine shall be authorized for waste tire storage.

2. Pattison Tire Co. shall maintain security, implement fire prevention controls, and access controls, including future monitoring in accordance with the Fire Risk Assessment Plan.

3. Pattison Tire Co. shall deposit the sum of \$25,000 in a secured trust fund for the purpose of maintaining security, maintenance of the implemented fire prevention controls, access controls, and future monitoring in the event that Pattison Tire Co. is no longer in existence or otherwise unable to carry out these obligations. Pattison Tire Co. shall not be required to post or obtain any other form of financial assurance for the disposition of the waste tires in conformance with this amendment.

4. Pattison Tire Co. agrees that it shall implement and complete the sealing of the tires *in situ* inside the inactive underground mine in accordance with the specifications set forth in Section 4.1 of the Risk Assessment and Figure 4 that is attached to the Risk Assessment (the "Sealing Specifications").

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5. Pattison Tire Co. may at its discretion request approval from the DNR for actions that exceed the recommendations set forth in the Sealing Specifications. The request shall detail for the DNR's consideration the complete explanation of those efforts. Those efforts may include adding additional sealing material on top of the tires from boreholes drilled through the roof of selected areas of the mine.

6. Pattison Tire Co. agrees that it will grant to the DNR or its representatives access to the inactive underground mine used for tire storage for the purpose of monitoring compliance with the sealing specifications for the purpose of measuring, photographing, videotaping, or any other scientific or engineering measurement that the DNR deems necessary.

7. Pattison Tire Co. agrees to provide the following notifications to the DNR:

- a. Notice of Commencement. This notice shall be provided to the DNR when Pattison Tire Co. begins to move rock and sand to the tire area of the inactive underground mine at the commencement of the sealing operation.
- b. Notice of Deviation from the Sealing Specifications. This notice shall be provided to the DNR if Pattison Tire Co. finds that it must deviate from the Sealing Specifications. The notice must include what caused the deviation and what measures will be taken to provide an equal or better amount of protection as required by the Sealing Specifications.
- c. Notice of Completion. This notice shall be provided to the DNR by Pattison Tire Co. when the project is completed.

8. **MODIFIED:** The Notice of Commencement must be sent by Pattison Tire Co. to the DNR on or before **December 1, 2014**.

9. The Notice of Completion must be sent by Pattison Tire Co. to the DNR on or before July 1, 2016.

10. Pattison Tire Co. shall request written authorization from the DNR for any deviation prior to such deviation, unless infeasible. If written authorization is not obtained then any such notice shall explain why written authorization was infeasible in that instance.

11. Following receipt of the Notice of Completion, the DNR agrees to issue a notification to Pattison Tire Co. that it has no evidence that the sealing operation does not meet the Sealing Specifications.

12. Receipt of the notification to Pattison Tire Co. that it has no evidence that the sealing operation does not meet the Sealing Specifications completes the obligations of Pattison Tire Co. under the terms of this amendment.

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13. Both parties agree that humidity, safety conditions, and access issues caused by seasonal busy times for CGB Enterprises will require an extension of deadlines in order to allow inspections to be made or work to be completed in a safe manner.

14. Pattison Tire Co. shall record an affidavit explanatory of title in the deed record of this property to notify future owners of the existence of the waste tires and such affidavit shall indicate that the tires may not be disturbed by a subsequent titleholder without prior authorization from the DNR.

15. All contingency and emergency operations shall be conducted in accordance with the previously approved Emergency Response and Remedial Action Plan (ERRAP), received June 24, 2004, as prepared by Kyle Pattison, in compliance with 567 IAC 102.14.

**VI. PENALTY**

1. Iowa Code section 455D.24 authorizes the assessment of civil penalties of up to \$10,000 per day of violation of sections 455D.11, 455D.11A, 455D.11B, 455B.11 for the waste tire regulations involved in this matter. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the solid waste disposal regulations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the assessment of a penalty is not necessary to secure compliance at this time. The DNR reserves the right and authority to seek future penalties in the event of noncompliance with this amendment or the prior administrative consent order as incorporated herein. Any such penalties will be pursued through the issuance of a separate administrative or judicial order.

3. The DNR specifically waives any penalties accruing for the failure by Pattison Tire Co. to submit a Notice of Commencement to the DNR on or before March 1, 2014 as required by the prior administrative consent order and which were accruing through the date of execution of this amendment.


**VII. WAIVER OF APPEAL RIGHTS**

This amendment is entered into knowingly and with the consent of Pattison Tire Co.. For that reason, Pattison Tire Co. waives its rights to appeal this amendment or any part thereof.

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**VIII. NONCOMPLIANCE**

Failure to comply with this amendment may result in the imposition of administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.307 and 455D.25. Total compliance with all provisions of Section "V. Order" of this amendment constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of the administrative consent order as incorporated by reference herein.

  
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CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 30<sup>th</sup> day of  
October, 2014

  
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KYLE PATTISON, MANAGER  
Kyle Pattison Tire Company LLC

Dated this 28 day of  
Oct, 2014

Field Office #1; VLC

